IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 228 OF 1998

Mahadev Balram Khandke ..Appellant

versus

Ravindra P. Khandke & Anr. ..Respondents

Mr. N. J. Patil for the Appellant.

Ms. Smita Mane i/b. P.B. Shah for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 29TH APRIL,2005

ORAL ORDER :

1. Heard learned counsel for the appellant and the respondents.

2. Appellant had filed a suit for setting aside the probate of Will of Gitabai. Copy of the plaint and other documents were made available to me by the counsel for the appellant. The Will was challenged on the grounds that Gitabai at the time of her death was about 100 years of age, wherein in the Will her age was shown as 70 years. Her death certificate was produced wherein her age is shown as 100 years. Secondly, it was contended that fraud was practised upon Gitabai and apart from that one

other plea that was raised that some other lady was made to appear before the Registrar to sign or put a thumb impression of Gitabai. Therefore, this is a case of someone else executing the Will of Gitabai by impersonating.

3. Admittedly the appellant has no personal knowledge. He was at Mumbai when the Will was executed, he could not and did not produce any evidence to show that some other lady was made to appear before the Registrar. There is no challenge to the mental, intellectual and understanding capacity of Gitabai at the time when she executed the Will. She may be 100 years or 70 years of age, that does not affect her capacity to make a Will. Therefore the only challenge to the Will was on the aforesaid two grounds. On both the grounds the appeal has failed. There is absolutely no evidence even to create suspicion about due and valid execution and attestation of the Will. The suit was rightly dismissed. Hence, appeal is dismissed with no order as to costs.

29.04.2005 (D.G. DESHPANDE, J.)